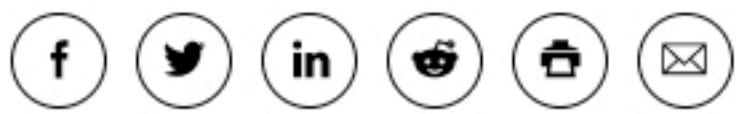


# Sorry, CMS, this time you've gone too far



James M. Berklan

Follow @jimberklan



James M. Berklan

Life as a regulator has to be thankless. To consumers, you don't do enough. To those you oversee – which typically means businesses – you do too much.

It's a never-ending tug-of-war and you have to have a certain constitution to absorb criticism.

But you also need to be humble enough to admit when you're wrong. And [Monday's announcement](#) of a new federal alert system that labels nursing homes with an open-palm red icon if they've been cited for abuse is a perfect example.

The Centers for Medicare & Medicaid Services can be commended for trying to make things clearer for consumers hoping to learn more about providers with a poor track record. With a mother already "in the system," I'd personally be grateful to know about particularly poor performers.

But the way CMS has chosen to do it is misguided. Plain and simple. The icon in question will be placed next to nursing homes in the consumer-facing Nursing Home Compare website that have been cited for abuse, neglect or exploitation. If actual harm was found during the past year, the label goes on; if the potential for harm existed in two consecutive years, the label goes on.

The equity of affixing a label can, and I'm sure will, be debated by providers. But for argument's sake, let's say it could work at some level.

The real beef is with the icon that is being used. An open palm does not convey "consumer alert." It says, "Halt! Do not proceed." To pretend otherwise is folly.

A traffic cop signaling you with open palm is not saying, "Carefully consider your movement forward" or "Be alert." He or she is telling you to stop. In the case of first responders, it would convey, "Do not cross this line." A basketball referee showing this open hand is not telling substitutes who want to enter the game to proceed cautiously. He or she is saying, "Stop. You cannot come in right now."

In commerce terms, it's saying, "Stop! Do not shop here – take your business elsewhere." And that's the big, condemnable rub.

This type of message – and from a government agency that provides an overwhelming percentage of the sector's funding, no less – can be a critical blow. Eyes will skim Nursing Home Compare quickly, see this red "Halt!" icon and, ironically, move all the faster to the next options. Every time. That's called using a sledgehammer when a knock on the door might do.

Now, should bad players be recognized? Mom deserves as much. (Another good question might be, "Do you believe in a 'one strike and you're out' policy?" But again, I'll leave that to the providers to debate. As one commenter on our [story](#) breaking this news pointed out, however, there aren't many caregivers looking to deliver poor care, and slip-ups can occur.)


So back to the message being sent. When I think of a warning alert, I see a yellow exclamation point on the dashboard of my car. Maybe it's in a triangle or a circle. There are numerous other symbols that can also shout, "Hey – better check this out!"

A simple Googling of "alert icon," in fact, shows some of the many examples. Many use red. Fair enough. Go ahead and Google "consumer alert" and the same exclamation point is common.



Not until one Googles "stop icon" does the open palm image pop up.

That is what I present to CMS officials and their new policy right now: Its own open-palm "Do not proceed" icon.

 This new system isn't supposed to go into effect until Oct. 23, which is two weeks away. Certainly, if there's not enough time to otherwise tweak the process, there's time to swap the flawed "Do not proceed" icon for a true caution or warning symbol. Since it's all to occur online, there are surely systems operators who can trade one graphic for another, probably within an hour.

You would still probably get flak from both sides – consumers and providers. But then again, you're used to that, being regulators and all. And this way at least you could go to bed at night with clearer consciences.

Follow Executive Editor James M. Berklan @JimBerklan.